

1978 S.C. Op. Atty. Gen. 209 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-180, 1978 WL 22648

Office of the Attorney General

State of South Carolina

Opinion No. 78-180

OCTOBER 31, 1978

**\*1 SUBJECT: Loans; Banks and Banking**

(1) South Carolina law does permit Standard Savings and Loan Association to issue such security forms as to permit them to raise capital in the form of savings deposits.

(2) Such savings deposits, and any other savings accounts in the institution, would have the same priority as ordinary general creditors of the institution in the event of liquidation, dissolution, or winding up.

(3) Such savings deposits and savings accounts would share on a pro-rata basis in any surplus after all other liquidation claims are paid.

(4) The terms 'savings deposit' and 'savings accounts' under the laws of this State as applied to Standard Savings and Loan Association do come within the definition of 'insured account' as defined in the insurance of the accounts regulation.

TO: H. Dave Whitener, Jr.  
Attorney at Law

**QUESTIONS:**

(1) Does South Carolina law permit a State chartered Savings and Loan Association to issue security forms which allow such entities to raise capital in the form of savings deposits?

(2) Would such savings deposits and any other savings accounts in the institution, in the event of liquidation, dissolution, or winding up, or in the event of any other situations which the priority of such accounts is in controversy, have the same priority as ordinary general creditors of the institution?

(3) Would the savings deposits and savings accounts share in any surplus on a pro-rata basis after all other liquidation claims are paid?

(4) Do the terms 'savings deposit' and 'savings accounts' under the laws of the State come within the definition of an 'insured account' as defined in the insurance of the accounts regulation?

**AUTHORITIES:**

[Section 34-25-10, 1976 Code of Laws of South Carolina;](#)

[Griffin v. White, 182 S.C. 219, 189 S.E. 127 \(1936\);](#)

[Op. Atty. Gen., dated September 30, 1970 \(unpublished\);](#)

By-Law of Standard Savings and Loan Association (Attached Hereto).

#### DISCUSSION:

Act No. 286 of 1969 specifically empowers Savings and Loan Associations to raise capital in the form of savings deposits. See, Op. Atty. Gen., dated September 30, 1970, Unpublished. This Act, now codified in [Section 34-25-10 of the Code of Laws of South Carolina \(1976\)](#), would, therefore, allow Standard Savings and Loan to convert from a share to a deposit type savings institution.

Questions have also been raised as to whether depositors would have the same priority, in the event of liquidation, dissolution, winding up, etc., as ordinary general creditors of the institution and whether such depositors would share in any surplus on a pro-rata share after all other liquidation claims are paid. It is this Office's opinion that they do have the same priority as ordinary general creditors and would share pro-rata in the surplus.

In [Griffin v. White](#), 182 S.C. 219, 189 S.E. 127 (1936), the Supreme Court of South Carolina, in addressing a situation as to whether holders of 'paid-up certificates' of a building and loan association were to be considered general creditors or shareholders, set forth a number of factors which if applied to the instant situation would lead to the result that savings depositors of Standard Savings and Loan Association would have the same priority as general creditors. The Court first noted that each case must be decided upon the particular facts in question, and, therefore, no general, all-encompassing rule may be formulated. The Court, in confronting the situation in [Griffin](#), found that it must look to the Constitution of the association, its by-laws, its literature, and the contracts entered into between the account holders and the association in order to define the status of the holders as general creditors or shareholders. Using the above factors in the instant case, it seems clear that as to Standard Savings and Loan, the account holders will be considered general creditors and thus have priority over stockholders in circumstances of dissolution. Furthermore, savings depositors have the right to share in the remaining assets of the association as if they were savings accounts. The by-laws of the association specifically provide for such priority and pro-rata sharing (Article IV, Section 2). The passbook issued to the savings depositor indicates that the depositor holds a savings account subject to the articles of incorporation and the by-laws of the association.<sup>1</sup> Since the certificates issued to the account holder by Standard Savings provides that he will be bound by the priorities as established in the by-laws, and following the standards as enunciated in [Griffin](#), these savings accounts and deposits would be considered as general creditors when priorities must be determined and would share in any surplus on a pro-rata basis. See, 13 Am. Jur. Building and Loan Associations, Section 112 (1964); [Annotation](#), 98 A.L.R. 132 (1935); (See also certificates attached hereto).

\*2 Finally, these savings deposits and savings accounts would be considered insured accounts as defined in Section 561.3 of the Rules of Regulations for Insurance of Accounts. That section provides that an 'insured account' is a savings account . . . held by an insured member in an institution insured by the Federal Savings and Loan Insurance Corporation (FSLIC). An 'insured member' is in turn defined in Section 561.2 as the holder of an account or accounts in an institution insured by FSLIC. It is our understanding, and the certificates of Standard Savings and Loan so indicate, that the Association is insured by FSLIC. This being the case, these savings accounts and deposits are 'insured accounts' within the context of Section 561.3.

#### CONCLUSION:

- (1) Standard Savings and Loan Association may raise capital in the form of savings deposits.
- (2) Such savings deposits would have the priority of ordinary general creditors in the event of liquidation, dissolution, or winding up.

(3) Such savings deposits and savings accounts would share pro-rata in any surplus after all other liquidation claims are paid.

(4) The terms 'savings deposit' and 'savings accounts' as applied to Standard Savings and Loan Association do come within the definition of 'insured account' as defined in the insurance of the accounts regulation.

Richard B. Kale, Jr.  
Assistant Attorney General

Footnotes

- 1** Generally, a depositor in a savings and loan association is deemed bound by the by-laws of the association upon acceptance by him of the passbook. See, Annotation, 60 A.L.R.2d 716.  
1978 S.C. Op. Atty. Gen. 209 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-180, 1978 WL 22648

---

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.